

In the Matter of Merchant Mariner's Document No. Z-189548 and all
other Licenses, Certificates and Documents
Issued to: JULIAN EUGSTER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JULIAN EUGSTER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order date 15 November 1954, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-189548 issued to Julian Eugster upon finding him guilty of misconduct based upon three specifications alleging in substance that while in the service of the American USNS MISSION SAN LUIS REY as a wiper and acting under authority of the document above described, he deserted said vessel in the port of Yokosuka, Japan, on or about 4 September 1951; while in the service of the American SS IRAN VICTORY as a deck maintenance man and acting under authority of the above document, he failed to join his vessel in the port of Sasebo, Japan, on or about 13 January, 1953; and while in the service of the American MV TIMBER HITCH as an able seaman and acting under authority of the above document he failed to join his vessel in the port of Sasebo, Japan, on or 6 January, 1954.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and each of the above three specifications.

Thereupon, the Investigating Officer made his opening statement and Appellant submitted a sworn statement in mitigation. Appellant stated that he committed these offenses because of his strong desire to be with his Japanese wife and his children in Japan. With respect to the offense of desertion, Appellant stated that he asked the Master for a mutual release and when the Master would not agree to this, the Master was informed by Appellant that he would not sail with the ship.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea to the three specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-189548, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

From that order, this appeal has been taken, and it is urged that the order is too severe; this order will deprive Appellant of his livelihood and impose a great hardship on his family; the offenses were not caused by drinking or performing but by Appellant's desire to be with his family; and Appellant's actions did not inconvenience the vessels concerned because he kept employed on the shuttle run.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 4 September 1951, Appellant was in the service of the American USNS MISSION SAN LUIS REY as a wiper and acting under authority of his Merchant Mariner's Document No. Z-189548. On this date, Appellant deserted his ship in the port of Yokosuka, Japan.

On 13 January 1953, Appellant was in the service of the American SS IRAN VICTORY as a deck maintenance man and acting under authority of the above document when he failed to join his ship in the port of Sasebo, Japan.

On 6 January 1954, Appellant was in the service of the American MV TIMBER HITCH as an able seaman and acting under authority of the above document when he failed to join his ship in the port of Sasebo, Japan.

OPINION

The order of three months suspension is not considered to/ be excessive. In each instance, Appellant created a potentially dangerous situation because the ship on which he contracted to serve might have been required to operate in an undermanned condition or with an inadequate replacement. This is the main reason why remedial action is required when seamen do not sail with the ships on which they have agreed to serve. Ordinarily, the offense of desertion in a foreign port would alone call for a more severe order than the one which was imposed by the Examiner in this cases.

The order of the Examiner should be sustained despite the temporary personal hardship which this will cause Appellant and his family.

ORDER

The order of the Examiner dated at San Francisco, California,
on 15 November 1954 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 15th day of August, 1955.